



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/170286

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 16, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency properly implemented a tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jeannie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On June 24, 2015 the agency sent the petitioner the following FoodShare (FS) overpayment notices:

- a. Overpayment in the amount of \$1,548.00 for the period from January 9, 2013 to August 31, 2013 under claim number [REDACTED].
 - b. Overpayment in the amount of \$1,898.00 for the period from September 3, 2013 to June 30, 2014 under claim number [REDACTED].
3. On June 25, 2015 the agency sent the petitioner the following FS overpayment notices:
 - a. Overpayment in the amount of \$4,644.00 for the period from March 1, 2013 to February 28, 2014 under claim number [REDACTED].
 - b. Overpayment in the amount of \$569.00 for the period from March 5, 2014 to June 30, 2014 under claim number [REDACTED].
4. All the notices stated that the petitioner had 90 days from the date of the notice to appeal the overpayments. The petitioner never appealed the overpayment.
5. The agency mailed the petitioner a repayment agreement on July 2, 2015.
6. The agency mailed the petitioner dunning notices on August 4, 2015, September 2, 2015, and October 5, 2015.
7. The agency mailed the petitioner a notice of tax intercept on November 13, 2015. This notice was mailed to the petitioner at [REDACTED].
8. On November 23, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
9. With the exception of the tax intercept notice, all of the above-listed notices were sent to the petitioner at [REDACTED]. This is the same address the petitioner provided in his Request for Fair Hearing. The Division of Hearings and Appeals received a notice from the postal service indicating that the petitioner had a new address, and that the notice had been forwarded. The petitioner appeared for the scheduled hearing. He provided a more recent updated address during the hearing.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;

- Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
 5. Free from any current appeals.
 6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the petitioner's appeal of the tax intercept is timely.

At a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because the petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

The petitioner argued that he never received the overpayment notices, the repayment agreement, nor the dunning notices. I do not find this testimony credible. These notices were mailed to the address that the petitioner provided on his Request for Fair Hearing. Although the petitioner's address has changed, the post office listed a forwarding address from the address where the notices were sent. The petitioner was aware of this overpayment. The overpayment is the result of the petitioner living with his girlfriend and not reporting that information to the agency. This couple had contact with the agency investigator. Notices were also sent to the petitioner's girlfriend. The petitioner was aware of the hearing when the hearing notice was sent to the same address as the overpayment notices, repayment agreement, and dunning notices. To now argue that he did not know about the overpayment, and did not have an opportunity to contest the overpayment is not an accurate reflection of the facts in this case.

I note that even if I had jurisdiction to decide the underlying overpayment, I would decide in the agency's favor. The petitioner and his girlfriend admit that he was "staying" in the home a lot during some of the overpayment time period. In addition, the agency conducted an investigation during which they interviewed other witnesses and looked at other evidence confirming the petitioner was in the home during the overpayment period.

There is no dispute that the use of tax intercept was proper in this case. The petitioner received three or more dunning notices, the debt was valid and legally enforceable, the debt was over both the State and federal threshold amount for a tax intercept, the debt is within State and Federal time limits for collecting, is free from any appeal, and the Petitioner has not filed for bankruptcy.

CONCLUSIONS OF LAW

The agency properly implemented a tax intercept.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

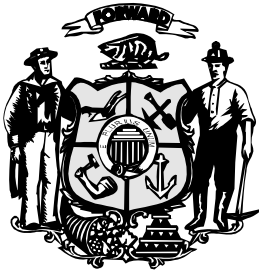
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of January, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 6, 2016.

Winnebago County Department of Human Services
Public Assistance Collection Unit